
SENATE BILL No. 495

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.5-9; IC 6-8.1-1-1.

Synopsis: Property tax circuit breaker income tax. Permits a county to impose an income tax to replace property tax revenue that is reduced as a result of the property tax circuit breaker rate caps. Requires the department of local government finance to determine and certify the property tax circuit breaker replacement amount. Requires the budget agency to determine and certify the income tax rate necessary to raise the property tax circuit breaker replacement amount. Provides that these determinations are made when the income tax is initially imposed. Allows for subsequent determinations of the replacement amount and the maximum rate. Provides that the rate may not exceed the lesser of the certified rate or 1%. Requires the revenue from the tax to be deposited in each fund affected by the property tax circuit breaker. Requires any excess income tax revenue to be deposited in the civil taxing unit's rainy day fund.

Effective: July 1, 2009.

Broden

January 15, 2009, read first time and referred to Committee on Appropriations.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 495

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3.5-9 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]:

4 **Chapter 9. Property Tax Circuit Breaker Income Tax**

5 **Sec. 1. (a) Except as otherwise provided in this section, as used**
6 **in this chapter, "adjusted gross income" has the meaning set forth**
7 **in IC 6-3-1-3.5(a).**

8 **(b) In the case of a county taxpayer who is not a resident of a**
9 **county that has imposed the property tax circuit breaker income**
10 **tax, the term "adjusted gross income" includes only adjusted gross**
11 **income derived from the taxpayer's principal place of business or**
12 **employment.**

13 **Sec. 2. As used in this chapter, "circuit breaker credit" refers to**
14 **a credit granted under IC 6-1.1-20.6.**

15 **Sec. 3. As used in this chapter, "circuit breaker replacement**
16 **amount" refers to the amount determined under section 8 of this**
17 **chapter.**

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1 Sec. 4. As used in this chapter, "county council" includes the
2 city-county council of a consolidated city.

3 Sec. 5. As used in this chapter, "county taxpayer" as it relates
4 to a county for a year means any individual who:

5 (1) resides in that county on the date specified in section 19 of
6 this chapter; or

7 (2) maintains a principal place of business or employment in
8 that county on the date specified in section 19 of this chapter
9 and who does not on that same date reside in another county
10 in which the county adjusted gross income tax, the county
11 option income tax, or the property tax circuit breaker income
12 tax is in effect.

13 Sec. 6. As used in the chapter, "department" refers to the
14 department of state revenue.

15 Sec. 7. (a) The property tax circuit breaker income tax may be
16 imposed on the adjusted gross income of county taxpayers. The
17 entity that may impose the tax is:

18 (1) the county income tax council (as defined in IC 6-3.5-6-1)
19 if the county option income tax is in effect on March 31 of the
20 year the property tax circuit breaker income tax is imposed;

21 (2) the county council if the county adjusted gross income tax
22 is in effect on March 31 of the year the property tax circuit
23 breaker income tax is imposed; or

24 (3) the county income tax council or the county council,
25 whichever acts first, for a county not covered by subdivision
26 (1) or (2).

27 To impose the property tax circuit breaker income tax, the entity
28 must first request a determination of the maximum property tax
29 circuit breaker income tax rate under section 8 of this chapter.

30 (b) The property tax circuit breaker income tax may be imposed
31 on the adjusted gross income of county taxpayers in increments of
32 one-tenth percent (0.1%) but not to exceed the certified property
33 tax circuit breaker income tax rate.

34 Sec. 8. (a) A civil unit's circuit breaker replacement amount
35 equals the amount of circuit breaker credits under IC 6-1.1-20.6
36 that are attributable to property assessed in the county and
37 granted against the levies for all funds of the civil taxing unit in the
38 year of the determination. A county's circuit breaker replacement
39 amount is the sum of the circuit breaker replacement amounts for
40 all civil taxing units in the county.

41 (b) A county that desires to impose the property tax circuit
42 breaker income tax must first make a request for its circuit

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breaker replacement amount and maximum property tax circuit breaker income tax rate to be determined. The request must:

- (1) be in the form of a resolution adopted by the appropriate body after January 1 and before February 15; and
- (2) specifically state that the county is requesting the determination.

(c) A certified copy of the resolution must be submitted, before March 1 of the year it is adopted, to the department of local government finance.

Sec. 9. (a) Before March 15 of the calendar year in which a resolution is submitted under section 8 of this chapter, the department of local government finance shall make a determination and certify to the county auditor, the budget agency, and the department the circuit breaker replacement amount for:

- (1) each civil taxing unit in the county; and
- (2) all civil taxing units in the county.

(b) Before March 31 of the calendar year in which the department of local government finance makes a certification under this section, the budget agency shall make a determination and certify to the county auditor and the department the maximum property tax circuit breaker income tax rate for the county. The maximum property tax circuit breaker income tax rate is the lesser of:

- (1) the rate necessary to raise the certified circuit breaker replacement amount, rounded up to the nearest one tenth percent (0.1%); or
- (2) one percent (1%).

(c) A determination under this section shall be made using the best information available to the agency making the determination.

(d) An adopting body may adopt a resolution requesting a new determination if the maximum rate determined under this section is less than one percent (1%) and it finds that the maximum rate is too low to raise the certified circuit breaker replacement amount. The resolution must be adopted before February 15 of the year the new determination is sought, set forth the reasons supporting the adopting body's findings, and be submitted, before March 1 of that year, to the director of the office of management and budget. The director of the office of management and budget shall grant the request and cause a new determination to be made if:

- (1) the actual property tax circuit breaker income tax revenue is less than the certified circuit breaker replacement amount for two (2) consecutive years; or

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(2) the previous determination was made more than three (3) years before the request for a redetermination.

With respect to all other requests, the director may deny or grant the request for a new determination in the director's sole discretion. Before April 1 of the year a request is submitted, the director shall provide the county auditor, the department of local government finance, and department with a written decision on the request.

(e) The director of the office of management and budget may cause a new determination to be made if:

(1) the budget agency finds that the actual property tax circuit breaker income tax revenue is sufficiently greater than the certified circuit breaker replacement amount for two (2) consecutive years such that the maximum property tax circuit breaker income tax rate could be reduced by at least one tenth percent (0.1%); or

(2) it has been more than three (3) years since the previous determination was made.

If a new determination under this subsection results in the maximum rate being less than the rate in effect in the year the new determination is made, the rate is reduced to the new maximum rate without any action by the county. The new rate takes effect October 1 of the year of the new determination. The budget agency shall certify the new maximum rate to the county auditor and the department.

Sec. 10. (a) To impose, increase, decrease, or rescind the property tax circuit breaker income tax, the appropriate body must, after March 31 but before August 1 of a year, adopt an ordinance. A county income tax council shall use the procedures set forth in IC 6-3.5-6 concerning the imposition of the county option income tax.

(b) The ordinance to impose the tax must substantially state the following:

"The _____ County _____ imposes the property tax circuit breaker income tax on the county taxpayers of _____ County. The property tax circuit breaker income tax is imposed at a rate of _____ percent (____%). This tax takes effect October 1 of this year."

Sec. 11. (a) The body imposing the tax may decrease or increase the property tax circuit breaker income tax rate imposed upon the county taxpayers as long as the resulting rate does not exceed the maximum rate certified under section 9 of this chapter.

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(b) To decrease or increase the rate, the appropriate body must, after March 31 but before August 1 of a year, adopt an ordinance. The ordinance must substantially state the following:

"The _____ County _____ increases (decreases) the property tax circuit breaker income tax rate imposed upon the county taxpayers of the county from _____ percent (____%) to _____ percent (____%). This tax rate increase (decrease) takes effect October 1 of this year.".

Sec. 12. (a) The property tax circuit breaker income tax imposed under this chapter remains in effect until rescinded.

(b) The body imposing the property tax circuit breaker income tax may rescind the tax by adopting an ordinance to rescind the tax after March 31 but before August 1 of a year.

Sec. 13. (a) Any ordinance adopted under this chapter takes effect October 1 of the year the ordinance is adopted.

(b) The auditor of a county shall record all votes taken on ordinances presented for a vote under the authority of this chapter and shall, not more than ten (10) days after the vote, send a certified copy of the results to the commissioner of the department by certified mail.

Sec. 14. (a) A special account within the state general fund shall be established for each county adopting the property tax circuit breaker income tax. Any revenue derived from the imposition of the income tax by a county shall be credited to that county's account in the state general fund.

(b) Any income earned on money credited to an account under subsection (a) becomes a part of that account.

(c) Any revenue credited to an account established under subsection (a) at the end of a fiscal year may not be credited to any other account in the state general fund.

Sec. 15. (a) Revenue derived from the imposition of the property tax circuit breaker income tax shall be distributed to the county that imposed it.

(b) Before August 2 of each calendar year, the department, after reviewing the recommendation of the budget agency, shall certify to the county auditor of each adopting county the amount of income tax revenue that the department determines has been:

- (1) received for that county for the taxable year ending before the calendar year in which the determination is made; and
- (2) reported on an annual return or amended return processed by the department in the state fiscal year ending before July 1 of the calendar year in which the determination

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is made.

The amount shall be adjusted as provided in this section. The amount certified is the county's certified distribution for the following calendar year.

(c) The department shall adjust the amount determined under subsection (b), as determined after review of the recommendation of the budget agency, for:

(1) refunds of property tax circuit breaker income tax made in the state fiscal year; and

(2) the amount of interest in the county's special account that has been accrued but has not been included in a certification made in a preceding year.

(d) The department shall certify an amount that is less than the amount determined under subsection (c) if the department, after reviewing the recommendation of the budget agency, determines that the reduced distribution is necessary to offset overpayments made in a calendar year before the calendar year of the distribution. The department, after reviewing the recommendation of the budget agency, may reduce the amount of the certified distribution over several calendar years so that any overpayments are offset over several years rather than in one (1) lump sum.

(e) The department shall certify an amount that is more than the amount determined under subsection (c) if the department, after reviewing the recommendation of the budget agency, determines that the increased distribution is necessary to offset under payments made in a calendar year before the calendar year of the distribution.

(f) The department shall, after reviewing the recommendation of the budget agency, adjust the certified distribution of a county to correct for any clerical or mathematical errors made in any previous certification under this section. The department, after reviewing the recommendation of the budget agency, may reduce the amount of the certified distribution over several calendar years so that any reduction under this subsection is offset over several years rather than in one (1) lump sum.

(g) This subsection applies to a county that:

(1) initially imposed the property tax circuit breaker income tax; or

(2) increases the property tax circuit breaker income tax rate; under this chapter that takes effect in the same calendar year in which the department makes a certification under this section. The department, after reviewing the recommendation of the budget

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agency, shall adjust the certified distribution of a county to provide for a distribution in the immediately following calendar year.

(h) The budget agency shall provide each county's fiscal body with an informative summary of the calculations used to determine the certified distribution. The summary of calculations must include:

(1) the amount reported on individual income tax returns processed by the department during the previous state fiscal year; and

(2) adjustments for:

(A) refunds;

(B) special account interest;

(C) over or under distributions in prior years;

(D) clerical or mathematical errors in prior years; and

(E) tax rate changes.

(i) On the first business day in May of each year, one-half (1/2) of each county's certified distribution for a calendar year shall be distributed from its account to the county treasurer. The other one-half (1/2) shall be distributed on the first business day in November of that calendar year.

Sec. 16. (a) Before October 2 of each year, the department shall submit a report to each county auditor indicating the balance in the county's special account as of the cutoff date set by the budget agency.

(b) If, after receiving a recommendation from the budget agency, the department determines that a sufficient balance exists in a county's account in excess of the amount necessary, when added to other money that will be deposited in the account after the date of the recommendation, to make certified distributions to the county in the ensuing year, the department shall make a supplemental distribution to a county from the county's special account.

(c) A supplemental distribution must be:

(1) made in January of the ensuing calendar year;

(2) allocated in the same manner as certified distributions; and

(3) deposited in the civil unit's rainy day fund established under IC 36-1-8-5.1.

Sec. 17. The county auditor shall allocate the certified distribution to the county among the civil taxing units that have a circuit breaker replacement amount. Each civil taxing unit's allocation amount is the certified distribution multiplied by the

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ratio of:

- (1) the civil taxing unit's circuit breaker replacement amount; divided by
- (2) the sum of all circuit breaker replacement amounts for all civil taxing units.

Sec. 18. A civil taxing unit shall deposit the amount received under this chapter as follows:

- (1) An amount equal to the circuit breaker replacement amount for each fund of the civil taxing unit shall be deposited in that fund.
- (2) Any part of a distribution remaining after making the deposit required under subdivision (1) shall be deposited in the civil taxing unit's rainy day fund established under IC 36-1-8-5.1.

Sec. 19. (a) For purposes of this chapter, an individual shall be treated as a resident of the county in which the individual:

- (1) maintains a home if the individual maintains only one (1) home in Indiana;
- (2) if subdivision (1) does not apply, is registered to vote;
- (3) if subdivisions (1) and (2) do not apply, registers the individual's personal automobile; or
- (4) if subdivisions (1), (2), and (3) do not apply, spends the majority of the individual's time in Indiana during the taxable year in question.

(b) The residence or principal place of business or employment of an individual is to be determined on January 1 of the calendar year in which the individual's taxable year commences. If an individual changes location of residence or principal place of employment or business to another county in Indiana during a calendar year, the individual's liability for property tax circuit breaker income tax is not affected.

Sec. 20. If the property tax circuit breaker income tax is not in effect during a county taxpayer's entire taxable year, the amount of income tax that the county taxpayer owes for that taxable year equals the product of:

- (1) the amount of property tax circuit breaker income tax the county taxpayer would owe if the tax had been imposed during the county taxpayer's entire taxable year; multiplied by
- (2) a fraction. The numerator of the fraction equals the number of days during the county taxpayer's taxable year during which the income tax was in effect. The denominator

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of the fraction equals three hundred sixty-five (365).

Sec. 21. (a) If for a taxable year a county taxpayer is (or a county taxpayer and a county taxpayer's spouse who file a joint return are) allowed a credit for the elderly or individuals with a total disability under Section 22 of the Internal Revenue Code, the county taxpayer is (or the county taxpayer and the county taxpayer's spouse are) entitled to a credit against the county taxpayer's (or the county taxpayer's and the county taxpayer's spouse's) property tax circuit breaker income tax liability for that same taxable year. The amount of the credit equals the lesser of:

(1) the product of:

(A) the county taxpayer's (or the county taxpayer's and the county taxpayer's spouse's) credit for the elderly or individuals with a total disability for that same taxable year; multiplied by

(B) a fraction. The numerator of the fraction is the property tax circuit breaker income tax rate imposed against the county taxpayer (or against the county taxpayer and the county taxpayer's spouse). The denominator of the fraction is fifteen-hundredths (0.15); or

(2) the amount of property tax circuit breaker income tax imposed on the county taxpayer (or the county taxpayer and the county taxpayer's spouse).

(b) If a county taxpayer and the county taxpayer's spouse file a joint return and are subject to different property tax circuit breaker income tax rates for the same taxable year, they shall compute the credit under this section by using the formula provided by subsection (a), except that they shall use the average of the two (2) income tax rates imposed against them as the numerator referred to in subsection (a)(1)(B).

Sec. 22. (a) Except as otherwise provided in this chapter, all provisions of the adjusted gross income tax law (IC 6-3) concerning:

(1) definitions;

(2) declarations of estimated tax;

(3) filing of returns;

(4) remittances;

(5) incorporation of the provisions of the Internal Revenue Code;

(6) penalties and interest;

(7) exclusion of military pay credits for withholding; and

(8) exemptions and deductions;

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1 apply to the imposition, collection, and administration of the
2 property tax circuit breaker income tax.

3 (b) The provisions of IC 6-3-1-3.5(a)(6), IC 6-3-3-3, IC 6-3-3-5,
4 and IC 6-3-5-1 do not apply to the property tax circuit breaker
5 income tax.

6 (c) Notwithstanding subsections (a) and (b), each employer shall
7 report to the department the amount of withholdings of the
8 property tax circuit breaker income tax attributable to each
9 county. This report shall be submitted to the department:

10 (1) each time the employer remits to the department the tax
11 that is withheld; and

12 (2) annually along with the employer's annual withholding
13 report.

14 **Sec. 23. The property tax circuit breaker income tax is a listed**
15 **tax and an income tax for the purposes of IC 6-8.1.**

16 SECTION 2. IC 6-8.1-1-1, AS AMENDED BY P.L.131-2008,
17 SECTION 27, AS AMENDED BY P.L.146-2008, SECTION 358,
18 AND AS AMENDED BY P.L.95-2008, SECTION 15, IS
19 CORRECTED AND AMENDED TO READ AS FOLLOWS
20 [EFFECTIVE JULY 1, 2009]: Sec. 1. "Listed taxes" or "taxes" includes
21 only the pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5); the
22 riverboat admissions tax (IC 4-33-12); the riverboat wagering tax
23 (IC 4-33-13); the slot machine wagering tax (IC 4-35-8); *the type II*
24 *gambling game excise tax (IC 4-36-9)*; the gross income tax (IC 6-2.1)
25 (repealed); the utility receipts and utility services use taxes (IC 6-2.3);
26 the state gross retail and use taxes (IC 6-2.5); the adjusted gross income
27 tax (IC 6-3); the supplemental net income tax (IC 6-3-8) (repealed); the
28 county adjusted gross income tax (IC 6-3.5-1.1); the county option
29 income tax (IC 6-3.5-6); the county economic development income tax
30 (IC 6-3.5-7); ~~the municipal option income tax (IC 6-3.5-8);~~ **the**
31 **property tax circuit breaker income tax (IC 6-3.5-9)**; the auto rental
32 excise tax (IC 6-6-9); the financial institutions tax (IC 6-5.5); the
33 gasoline tax (IC 6-6-1.1); the alternative fuel permit fee (IC 6-6-2.1);
34 the special fuel tax (IC 6-6-2.5); the motor carrier fuel tax (IC 6-6-4.1);
35 a motor fuel tax collected under a reciprocal agreement under
36 IC 6-8.1-3; the motor vehicle excise tax (IC 6-6-5); the commercial
37 vehicle excise tax (IC 6-6-5.5); *the excise tax imposed on recreational*
38 *vehicles and truck campers (IC 6-6-5.1)*; the hazardous waste disposal
39 tax (IC 6-6-6.6); the cigarette tax (IC 6-7-1); the beer excise tax
40 (IC 7.1-4-2); the liquor excise tax (IC 7.1-4-3); the wine excise tax
41 (IC 7.1-4-4); the hard cider excise tax (IC 7.1-4-4.5); the malt excise
42 tax (IC 7.1-4-5); the petroleum severance tax (IC 6-8-1); the various

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innkeeper's taxes (IC 6-9); the various food and beverage taxes (IC 6-9); the county admissions tax (IC 6-9-13 and IC 6-9-28); the oil inspection fee (IC 16-44-2); the emergency and hazardous chemical inventory form fee (IC 6-6-10); the penalties assessed for oversized vehicles (IC 9-20-3 and IC 9-30); the fees and penalties assessed for overweight vehicles (IC 9-20-4 and IC 9-30); the underground storage tank fee (IC 13-23); the solid waste management fee (IC 13-20-22); and any other tax or fee that the department is required to collect or administer.

SECTION 3. [EFFECTIVE JULY 1, 2009] (a) Notwithstanding IC 6-3.5-9, as added by this act, a county that desires to impose the property tax circuit breaker income tax beginning October 1, 2009, must submit, before July 10, 2009, a certified copy of the resolution making the request for its circuit breaker replacement amount and maximum property tax circuit breaker income tax rate to be determined.

(b) If a request is submitted under subsection (a), the department of local government finance shall make a determination and certify, before July 20, 2009, to the county auditor, the budget agency, and the department of state revenue the circuit breaker replacement amount for:

- (1) each civil taxing unit in the county; and
- (2) all civil taxing units in the county.

(c) If the department of local government finance makes a certification under subsection (b), the budget agency shall make a determination and certify, before August 1, 2009, to the county auditor and the department of state revenue the maximum property tax circuit breaker income tax rate for the county.

(d) To impose the property tax circuit breaker income tax effective October 1, 2009, the appropriate body under IC 6-3.5-9-7 must, before August 15, 2009, adopt the ordinance imposing the tax in the manner and form required by IC 6-3.5-9, as added by this act.

(e) This SECTION expires December 31, 2009.

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